

**UNITED STATES OF AMERICA**

**v.**

**DAVID M. HICKS**

**PO 106**

**Docketing of First Session, U.S.  
Hicks**

**23 September 2005**

**1. References:**

- a. PO 106 - Hicks - Docketing Order by Presiding Officer, 21 September 2005.
- b. PO 106 - Hicks - Defense Reply to Docketing Order, 23 September 2005.
- c. PO 106 - Hicks - Defense Supplemental Information on Docketing, 23 September 2005.

**2. In addition to findings made in reference 1a, I also find that:**

a. Courtroom practice over a more than thirty year period convinces me that counsel who do not want to come to court, or believe they have insufficient time to prepare, are likely to present inferior products once they reach court.

b. The schedule which I established for motions practice in the Resumption of Proceedings Memorandum issued by Mr. Hodges was fair and reasonable given the information which was available at the time. However, given that MAJ Mori is OCONUS for two weeks of the time period involved, it appears less fair and reasonable.

c. The Appointing Authority's directive in Appointing Order #05-0001 was to hold an initial session, *if practical* (emphasis added), without members within thirty days. Recognizing the authority given to the Appointing Authority by the Secretary of Defense in paragraph 6B(4) of MCO #1, the term "if practical" leaves the date of the initial hearing to the discretion of the Presiding Officer.

d. There is a delicate balance among the duties to provide a full and fair trial (See PMO, Section 4(c)(2), 13 November 2001), the duty to proceed expeditiously and not allow accommodation of counsel to unnecessarily delay the proceeding (See MCO #1, paragraph 4A(5)(d), and the Appointing Authority's directive of 21 September 2005.).

e. Civilian counsel often set their trial and personal calendars in ways not common in military practice, especially in the way they arrange their personal vacation time with judges before whom they regularly appear.

f. No counsel on the case knew when stays might be lifted on this case, and the parties directed to proceed, until 21 September 2005.

g. Starting proceedings on 28 November 2005 as requested by the defense would be an almost impossible task to perform and would unnecessarily delay the proceedings. Thanksgiving comes on 24 November and counsel, support personnel, and others would be likely to encounter insurmountable travel delays. In this regard, I also take note that the normal travel to Guantanamo involves a Saturday flight from NAS Jacksonville. Finally on this point, Thanksgiving is also a traditional American Holiday - said to be the heaviest traveled period of the year - and a 28 November session would prevent many, to include those single military members serving in Cuba needed to support Commission sessions, to enjoy this holiday.

h. While holding the initial session on 17 October might be reasonable to some observers, it might be viewed as unreasonable, and thereby not practical, to others - especially those who appreciate the intricacies and timing of a motions schedule, the need to consider and answer filings of opposing counsel, and the unique nature of many of the issues before the Commission.

i. Modifying the motions schedule in this case to provide more time to prepare and answer filings will enhance the Commission's ability to provide a full and fair trial, and ensure that the issues are properly resolved.

j. The duty to hold a full and fair trial as directed by the President outweighs the other duties imposed upon the Presiding Officer by order and directive.

3. Therefore,

a. The initial session of this case will be held at 1000, 18 November 2005.

b. I will devise, and the Assistant will issue, a revised motions schedule.

**IT IS SO ORDERED:**

Peter E. Brownback, III  
Colonel, JA, USA  
Presiding Officer

**UNITED STATES OF AMERICA**

**V.**

DAVID M. HICKS

**PO 106 (Filings Inventory)**  
(PO items 101-105 have not yet been issued)

## Docketing ORDER

**21 September 2005**

1. In making the determinations below, I have considered the following matters:

a. Appointing Order No. 05-0001 (September 20, 2005) and the direction therein that “The Presiding Officer will convene, if practical, a session without the other members of the military commission within the next thirty days to resolve motions and any other matters as deemed appropriate by the Presiding Officer.”

b. An email from MAJ Mori, detailed defense counsel, setting out his schedule along with input from civilian counsel, Mr. Dratel (labeled in the enclosure as item 1b).

c. An email from the lead prosecutor in this case stating their willingness and ability to proceed on 17 Oct 2005 (labeled in the enclosure as item 1c).

d. An exchange of emails among Ms Besobrasow (Mr. Dratel's Assistant), Mr. Hodges, and the Presiding Officer (labeled in the enclosure as item 1d).

e. An email from Mr Dratel with additional input as to proceeding on 17 Oct 2005 and in response to item 1d above. (labeled in the enclosure as item 1e).

f. That MAJ Mori has been detailed to this case for at least eighteen months, that Mr. Dratel has been on the case for at least fifteen months, and that MAJ Lippert has been detailed to the case for at least ten months.

g. The number and thoroughness of all of the non-evidentiary motions filed by the Hicks defense team and litigated at the November 2004 trial session in this case.

2. I have also considered, as the items cited in paragraphs 1b and 1e above indicate, that MAJ Mori is out of country until the end of September 2005, and that MAJ Lippert is said to have other cases docketed hampering his availability until 17 October 2005. However, I am not aware of any impediment to MAJ Lippert's conducting business by email; email being the normal and usual method of communication among parties. (See Presiding Officer Memoranda # 3-1 and 4-3.).

3. I also note that the only important impediment to having a session begin on 17 October 2005 is the "investigative trip" with MAJ Mori and Mr. Dratel concerning this very case.

4. Understanding my duty to properly balance the need to proceed without the schedule of counsel unnecessarily delaying the proceedings, and the need to provide the accused with a full and fair trial, I find that waiting until 28 November 2005 to hold the first session does unnecessarily delay the proceedings and is not necessary to provide the accused a full and fair trial. Accordingly, I set the first session without members to address all known motions, as well as "Directed Briefs" mentioned in the "Resumption of Proceedings Memo" of 21 September 2005 that are in the process of being issued, for 17 October 2005 at Guantanamo Bay. As discovery is now ongoing, I do not expect - yet would welcome - briefs to suppress evidence or motions in *limine* during this session.

5. It is additionally noted that other than Mr Dratel's scheduled vacation, there does not appear to be a significant reason why the first session could not be scheduled to begin on either 24 October or 31 October 2005. If Mr. Dratel **not later than 1200, 23 September 2005**, on behalf of the Hicks defense team, elects either of those days as the first day of the motions session, I will set the case for the date he chooses. If Mr. Dratel does not make an election by the time stated, the first motions session will begin at 1200 hours, 17 October 2005 at Guantanamo Bay, Cuba.

6. The parties to this trial are aware that many of the motions that are expected to be litigated will be generally similar to those that were previously filed (but, these as the "Resumption Memo" states, must be refiled even if previously filed), though those briefs might need to be modified by the results of cases decided over the last year. In other words, other than the directed briefs mentioned in paragraph 4 above, the briefs for many issues are largely written with the possible need to adjust in the light of new law. In any event, in consultation with counsel, the briefing schedule and the dates to answer directed briefs will be appropriately adjusted depending on the date that Mr. Dratel selects (or 17 October 2005 if he does not select a date by the time required by this Order). The dates for the government remain unchanged. In this regard, I urge all parties to read and consider the provisions of paragraph 13, Presiding Officer Memorandum # 4-3.

7. Finally, I have also considered that Mr. David Hicks has been detained for almost four years. That is a significant period of time. The record bears out that since my appointment, this Presiding Officer has proceeded diligently, consistent with a full and fair trial, to move Mr. Hicks' case to resolution. Only stays issued by the Appointing Authority as a result of litigation in the Federal Courts have prevented the trial on the merits of this case. While Mr. Hicks remains detained, waiting for his full and fair trial, extra time to prepare briefs, go on vacation, or attend conferences is of much less import. Considering all the facts, I find that moving Mr. Hicks' trial forward is paramount to all other interests made known to me.

**IT IS SO ORDERED:**

/s/

Peter E. Brownback III  
COL, JA, USA  
Presiding Officer

## Item 1b.

Email from MAJ Mori, 20 Sep 05. At Mr. Dratel's request, personal details have been redacted. All redacted information has been seen by the Presiding Officer. KHo, the Assistant.

**From:** Mori, Michael, MAJ, DoD OGC [mailto:morim@dodgc.osd.mil]

**Sent:** Tuesday, September 20, 2005 10:42 PM

**To:** 'Brownback, Peter COL'

**Cc:** [REDACTED] jdratel@aol.com; Lippert, Jeffery MAJ [REDACTED]  
[REDACTED] Hodges, Keith; Mori, Michael, MAJ, DoD OGC

**Subject:** HICKS DEFENSE INPUT REGARDING TIMING OF FIRST MOTION SESSION

Sir,

As requested by Mr. Hodges I am providing information on the availability of counsel in the Hicks case focusing on the first session. Bottom line request from Hicks' defense team is to have the 1st motion session the week of 28 November.

Proposed schedule for motions filing: Pro & Def Motions due 31 October

Response due 14 November

Replies due 21 November

Hearing week of 28 November (Josh can not get there

until Monday)

This schedule will enable the resolution of some evidence production issues (via PO discovery orders) being sought by the defense for use in this motion session.

### Defense team schedules

I have requested that the Australian FACs provide me with some input on their upcoming schedules. I hope to have that in a few days but this requires some action/input by the Australian govt. So this input is with out the benefit of that information. I am also trying to get the schedule from Mr. David Walter, who may or may not be participating at the commission. I still do not have his input.

Availability of Maj Mori- I will be back in the office following my leave on 3 Oct. Except for usual holidays (Thanksgiving, X-Mass) I plan to be available. I do have some investigation distant from the office to conduct. During the week of 17 Oct, Mr. Dratel and I had planned to conduct some investigations which require travel.

Availability of Major Lippert: Major Lippert is in Germany and working on clearing his docket and arranging for the covering of his duties as senior defense counsel. He has 2 GCMs (one an officer case) which he hopes to have resolved and be able to return to DC by 17 Oct. Until 17 Oct, Major Lippert will not be available assist in the preparation of defense motions and case preparation.

Below is an e-mail from Mr. Dratel.

### Mr. Dratel's E-mail

Col. Brownback, et al:

This e-mail is in regard to the Appointing Authority's Order issued earlier today lifting the abeyance in the military commission charging my client, David Hicks. The Order calls for proceedings to be convened, if practical, within 30 days. However, for the reasons set forth below, it is respectfully submitted that the initial proceedings should not be scheduled until the week of November 29th.

As a threshold matter, the schedules of defense counsel preclude any proceedings prior to that week. Maj. Mori is currently on leave, returning October 1st, and Maj. Lippert returned today to Germany, where his duties, including trials, will prevent his return until October 17th at the earliest. My own schedule, which has been proceeding apace since the last commission proceedings last November, includes:

1. a trip to Dallas next week on a case, U.S. v. [redacted]
2. the Jewish High Holidays, including Rosh Hashanah on October 3-4, and Yom Kippur on Oct. 13-14.
3. October 18-20th, Maj. Mori and I will be conducting an investigative trip with respect to the case.
4. my vacation beginning October 26th, and running through November 6.
5. another trip to Dallas November 14-15th for a pretrial conference in the [redacted] case, and, in New York on Nov. 18th, a very important sentencing that has already been adjourned three times.

Interspersed I have other court appearances such as sentencings, conferences, etc. The week of November 21st is Thanksgiving, which brings us to the week of November 28th, which is currently clear.

There are other reasons as well. The Order states that the purpose of that initial proceeding will be to have the Presiding Officer resolve motions and any other matters. However, such motions need to be supplemented and re-filed based on (a) intervening events and legal developments since motions were filed a year ago; (b) the changes in the commission structure that create a "judge" in the person of the Presiding Officer; and (c) -----. That work cannot begin in earnest until Maj. Mori returns and Maj. Lippert returns (or at least until his trials conclude). Of course, the prosecution will also need time to respond, we will need time to reply, and the Presiding Officer will need time to review the materials.

Moreover, it also would seem prudent to await the Supreme Court's conference in Hamdan v. Rumsfeld before holding any commission proceedings. The Court is scheduled to conference September 26th with respect to Mr. Hamdan's petition for a writ of certiorari. If the Court grants certiorari, that would severely imperil the viability of the commission process moving forward. Similarly, Judge Kollar-Kotelly, who has sub judice Mr. Hicks's motion for summary judgment in his habeas petition in the D.C. federal District Court, is expected to rule within a short period of time as well. Thus, it would be substantially more efficient to have the first commission proceeding conducted after we have a more definitive sense of the legal landscape for the commission process, which should be available by mid-November.

In addition, if past experience is any guide, obtaining the appropriate country and theatre clearances with less than 30 days' notice is also problematic. Similarly, weather considerations also warrant caution in scheduling; by mid-November, this particularly active hurricane season will be over. If a proceeding is scheduled prior to that time, it could be for naught, since already this season inclement weather has hindered air travel in and out of Florida for days at a time.

Finally, within a week of returning to New York from last year's commission proceedings in late October/early November, I was completely incapacitated (bedridden) for three weeks due to [the precise nature of the condition redacted.] I have recovered without the need for surgery (and with considerable physical therapy), and while I still must travel too frequently, I would appreciate not having to make serial flights to various parts of the globe (i.e., returning from one trip and then embarking on another a day or two later) if it can be avoided -- particularly since it was that type of continuous turnaround that, I believe, contributed significantly to my [medical condition.] (for example, the day before traveling to GTMO on that trip last October I had made a 24-hour round trip to Columbus, Ohio, and, upon my return, flew to Dallas the Tuesday after my Saturday return from GTMO). The trip to GTMO is not an easy one, particularly when it involves a three-hour flight from Florida in a small aircraft, and I would like to accommodate my [condition] in that regard as much as possible.

Accordingly, it is respectfully submitted that it is not practical to resume Mr. Hicks's commission prior to the week of November 28th, and it is respectfully requested that the Presiding Officer set that week for such proceedings, with the defense motions due October 31st, the government's response due November 14th, and the defense reply due November 21st.

Respectfully submitted,

Joshua L. Dratel

**Major Michael D. Mori, U.S. Marine Corps**  
**Department of Defense, Office of the General Counsel**  
**Office of Military Commissions, Office of the Chief Defense Counsel**  
[REDACTED] Arlington, VA 22202  
[REDACTED]

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### Item 1c.

#### Email from the Lead Prosecutor (US v Hicks), 21 Sep 05

**From:** [REDACTED] DoD OGC [mailto:[REDACTED]]  
**Sent:** Wednesday, September 21, 2005 4:19 PM  
**To:** 'Keith.Hodges'; [REDACTED]  
**Cc:** Davis, Morris, COL, DoD OGC; Swann, Robert, Mr, DoD OGC; [REDACTED] Maj, DoD OGC; [REDACTED] LT, DoD OGC; [REDACTED] LT, DoD OGC; [REDACTED] DoD OGC; Mori,

Michael, MAJ, DoD OGC; 'morimd@hotmail.com'; JDratel@aol.com

**Subject:** FW: HICKS DEFENSE INPUT REGARDING TIMING OF FIRST MOTION SESSION

Mr. Hodges-- sir, the Prosecution proposed schedule is to convene the next Hicks commission session the week of 17 Oct 05 to litigate motions and proceed with this trial, accordingly.

V/r-- Maj [REDACTED]

[REDACTED] Maj, USMC  
Prosecutor, Office of Military Commissions  
DLSA, OGC, OSD, DoD  
Phone: [REDACTED]  
Fax: [REDACTED]  
[REDACTED]  
[REDACTED]

-----Original Message-----

**From:** Mori, Michael, MAJ, DoD OGC

**Sent:** Tuesday, September 20, 2005 22:42

**To:** 'Brownback, Peter COL'

**Cc:** [REDACTED] Maj, DoD OGC; jdratel@aol.com; Lippert, Jeffery MAJ [REDACTED]  
[REDACTED] Maj, DoD OGC; Hodges, Keith; Mori, Michael, MAJ, DoD OGC

**Subject:** HICKS DEFENSE INPUT REGARDING TIMING OF FIRST MOTION SESSION

*Note, the remainder of this email is identical to Item 1b. KHo, the Assistant.*

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## Item 1d.

### Exchange of emails among Mr Hodges, Ms Besobrasow, and COL Brownback, 21 Sep 05.

**From:** Pete Brownback [mailto:abnmj@cfl.rr.com]

**Sent:** Wednesday, September 21, 2005 2:07 PM

**To:** Hodges, Keith; Ebeso@aol.com

**Cc:** JDratel@aol.com

**Subject:** Docketing Decision - US v. Hicks - Initial Session

Mr. Dratel,

So there are no questions, please be assured that Mr. Hodges was following my instructions to get input from you. The email below is correct. I have to make a decision and Mr. Hodges has already confirmed that you have been quick, not only in this situation but in August of 2004, to provide information necessary for me to make the decision.

As you must know, I am trying to accomodate many varying and competeting interests in making this decision. Your input will be of great assistance. I do not say that it will be the primary factor in my decision, but I will give it careful consideration.



I am going to make a decision today. The personnel at Guantanamo need lead time to prepare for Commission hearings. I hope that I have your input before I make the decision.

COL Brownback

----- Original Message -----

**From:** Hodges, Keith  
**To:** Ebeso@aol.com  
**Cc:** JDratel@aol.com  
**Sent:** Wednesday, September 21, 2005 1:32 PM  
**Subject:** Confirming our Phone Call

Ms Besobrasow,

This is to confirm our call of a few minutes ago, and to ensure I knew the POs direction, I confirmed what I am about to send below.

The PO is going to docket the first motions session (no members) for 17 Oct (with travel probably the Sat before.) He made that decision after looking at all the facts to include MAJ Mori's email which included Mr. Dratel's portion.

The PO further told me to tell Mr. Dratel that if he doesn't call and provide anything else by 1700 eastern, then that is the day he will docket motions.

Please confirm receipt.

Keith Hodges

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**From:** Ebeso@aol.com [mailto:Ebeso@aol.com]  
**Sent:** Wednesday, September 21, 2005 10:48 AM  
**To:** Hodges, Keith  
**Subject:** Re: Docketing of Motions Session - US v Hicks

Mr. Hodges,

Your email regarding the schedule for proceedings has been received, and as soon as Mr. Dratel is finished with a meeting, I'll mention it to him.

Elizabeth Besobrasow  
Paralegal  
Law Offices of Joshua L. Dratel, P.C.

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**Item 1e.**

**Mr. Dratel's Email to Mr Hodges, and COL Brownback, 21 Sep 05.**

**From:** JDratel@aol.com

**To:** [REDACTED]

**Cc:** [REDACTED]

**Sent:** Wednesday, September 21, 2005 4:49 PM

**Subject:** Commission Schedule

Col. Brownback and Mr. Hodges:

I have just returned from a meeting that has lasted all afternoon. Initially, I must state that I have not had an opportunity to consult with Maj. Mori or Maj. Lippert, since they are both in transit out of the U.S.

Regarding October 15-22 as a projected date for initial proceedings, that is not feasible for several reasons:

1. The investigative trip that Maj. Mori and I have scheduled has been a long time in the making. It is also absolutely essential to motions that we will be making, and if we cannot go that week, there is not another time available for us to go (because, as I set forth yesterday, the remainder of the time until November 28th is entirely booked). Thus, it is not a fungible time period, and would, in effect, deny the defense the right to seek critical information. Also, moving the commission proceedings to 15 October means that other commitments -- such as another trip to Dallas for the case there, will have to be postponed for another six weeks (while, without the GTMO proceedings, I could fit in a day or two-day trip in between other commitments), which may well be longer than the judge in that case desires (since there is a classified response the defense must make that requires our presence in Dallas to draft and file).
2. October 15-22 also fails to afford the defense sufficient time to prepare the appropriate motions. A lot has occurred within the past year -- both legally and factually. As noted in my e-mail yesterday, Maj. Lippert, who was integral to the motions filed last year, will not be available until at least October 17th. Thus, this schedule would in effect deprive the defense team of an essential member. This is particularly onerous in light of the persistent understaffing of the defense team (especially relative to the resources assigned to the prosecution function). Also, as per yesterday's e-mail, Maj. Mori will not even be returning from leave until 1 October, which leaves us woefully insufficient time to prepare the motions. It also provides insufficient time for prosecution response, defense reply, and review by the PO prior to the argument date. The converse is true with respect to any motions made by the prosecution. The defense simply will not have the resources to answer them before any 15-22 October hearing. Moreover, the amendments to MCO No. 1 have created a new hybrid system that requires analysis and response as well. All of this work cannot be accomplished within the next three weeks -- which is how close the proposed date is -- during 10 days of which Maj. Mori will not be available, and for which Maj. Lippert will not be available at all (and during which my availability will be extremely curtailed due to other commitments and Jewish holidays observance). The effect will be to eviscerate the defense function completely for Mr. Hicks.
3. The arrangements that need to be made with the Australian authorities and the Australian lawyers likely cannot be made within the three-week period. Mr. Hicks has the right to the presence of the FAC's, and the proposed schedule denies him that right.

4. I have a Board meeting of a criminal defense organization October 15th outside NYC. I am the President, and we have important business to transact. I also know from prior experience that I would not be able to get a flight to GTMO until the Monday afterward (Oct. 17th).

5. Regarding the second set of proposed dates, as noted yesterday, the week of 28 November is available. The week following is not. I have a conference at which I am speaking that week, and I also have a court appearance on a federal capital case that week, and my final Board meeting as President of the New York State Association of Criminal Defense Lawyers.

6. The October 15-22 dates also are perilously close to the Supreme Court's conference in Hamdan. I do not want to cancel certain arrangements, i.e., our investigative trip, which has taken a long time to get in place, and then find out a week prior that the Supreme Court has granted cert. A 28 November week date provides an appropriate lead time for all of the scheduling pieces to fall into place.

Thank you for your consideration.

Joshua

Joshua L. Dratel, Esq.  
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jdratel@aol.com

PO 106 - Hicks - Defense Reply to PO Docketing Order of 21 SEP 05

**Hodges, Keith**

**From:** JDratel@aol.com  
**Sent:** Friday, September 23, 2005 10:54 AM  
**To:** Hodges, Keith; [REDACTED]  
 [REDACTED] sullivan@ [REDACTED] morin [REDACTED]  
 Ebeso@aol.com; Jeffery.Lippe [REDACTED]  
 [REDACTED]  
 [REDACTED]

**Subject:** Re: PO 106 - Hicks - Docketing Order (21 SEP 05)

Mr. Hodges:

This is in response to PO 106. I do not elect any of the three dates proposed in the PO 106. As you and the PO are well aware, I am not available the weeks of 24 October or 31 October. That leaves the week of 17 October, which is not feasible for several reasons, including (1) a planned investigative trip regarding this case, including matters related to essential motions; (2) that leaves insufficient time to prepare and file defense motions and/or respond effectively to any prosecution motions. Indeed, not only does the defense need to recast the 20 motions it filed last year, but now it must also prepare and file the five briefs directed by the PO within the last two days. Offered what is patently a Hobson's Choice, I decline to make one.

Also, you and the PO are well aware that while the prosecution function has four full-time lawyers available, the defense presently -- due to Maj. Mori's leave, Maj. Lippert's duty assignment, which included three court-martials within the next month, and my other commitments to my cases (and my unavailability due to the upcoming Jewish High Holy Days) -- has zero full-time attorneys. That makes the current proposed schedule ridiculous, and you know it.

In addition, it is unconscionable that the Appointing Authority and the commission sat on their hands for two months since the Hamdan decision was issued by the D.C. Circuit, and now creates a wholly unrealistic set of deadlines which can be viewed only as a transparent attempt to impair the defense function and deny Mr. Hicks a full and fair trial. In fact, Gen. Hemingway announced publicly that the commission proceedings would not resume until after the federal courts had ruled on both on Mr. Hicks's habeas petition and Mr. Hamdan's petition for certiorari (which led to the Hicks defense team making certain scheduling arrangements which demonstrably affect the team's ability to meet the unreasonable deadlines the PO has set).

Moreover, it is apparent from the subject of one of the briefings directed by the PO that the PO recognizes that the present commission system is in conflict with the PMO, and therefore invalid. Why, then, is there a rush to file briefs and conduct proceedings that everyone recognizes will be invalid? It is not the defense's obligation to reconcile the irreconcilable. Our position remains that the system itself is invalid in its entirety, and we do not intend to offer solutions that are piecemeal, and which do not address the totality of the deficiencies in the system.

The Hicks team also requests that the commission adopt the schedule for filings and proceedings that were submitted earlier this week in Maj. Mori's e-mail, and that this e-mail be treated as a formal request therefor.

Respectfully submitted,

Joshua L. Dratel, Esq.  
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9/23/2005

PO 106 - Hicks - Defense Reply to PO Docketing Order of 21 SEP 05

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**PO 106 - Hicks - Defense Supplemental Information on Docketing, 23 Sep 05**

This PO Filing Consists of 2 emails from Mr. Dratel and consists of this page and two additional pages. The additional pages are emails sent by Mr. Dratel to me.

These emails were in response to telephone calls I had with Mr. Dratel concerning the docketing of *United States v. Hicks*.

In the first email below, Mr Dratel was responding to my question whether he could proceed the week of 14 November 2005, as his requested date of 28 November 2005 would be difficult to arrange, and carry many complications, because it was the week after Thanksgiving. (The first attempt to email me was unsuccessful so he sent it again.)

In the second email, Mr. Dratel was responding to our discussion again about the difficulties of a November 28, 2005 session, and the possibility that when he finished his other business, could he proceed directly to Guantanamo.

Keith H. Hodges  
Assistant to the Presiding Officers

**Hodges, Keith**

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**From:** JDratel@aol.com  
**Sent:** Friday, September 23, 2005 3:01 PM  
**To:** Hodges, Keith  
**Subject:** Message

Here's the prior message:

Mr. H:

Unfortunately, I have conferred with co-counsel, and the court date in Dallas the week of Nov. 14th cannot be changed. There are multiple lawyers, some of whom have trials and other commitments that preclude moving that proceeding.

Thank you,

**Joshua**

Joshua L. Dratel, Esq.  
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**Hodges, Keith**

**From:** JDratel@aol.com  
**Sent:** Friday, September 23, 2005 3:18 PM  
**To:** Hodges, Keith  
**Cc:** morim[REDACTED], sullivan[REDACTED], Ebeso@aol.com; Jeffery.Lippert@[REDACTED]  
**Subject:** Scheduling

Here is my availability the week of 14 November:

I am in Dallas 14-16 November. I can fly to GTMO Thursday, 17 November from Dallas via Ft. Lauderdale (there aren't any flights to GTMO Wednesday, so trimming one day would not matter), we can commence Friday, 18 November, and go until Sunday or Monday (meaning that I would make a reservation to return to the mainland either Monday 21 Nov or Tuesday 22 Nov, since there are flights from GTMO both days -- but I would like to know ASAP so I can make the appropriate reservations, as they are small aircraft)

Thanks,

**Joshua**

Joshua L. Dratel, Esq.  
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